IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2932 OF 2004

M/s. Indus Agro Products. ...Petitioner.
Vs.
Union of India & Ors. ...Respondents.
....
Mr. S.S. Patwardhan for the Petitioner.
Mr. M.S. Karnik for Respondent No.3.
Mr. V.M. Jhaveri for Respondent No.4.
Mr. M.S. Topkar for Respondent No.7.
.....

CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 28, 2006.

JUDGMENT (Per Dr. D.Y. Chandrachud, J.) :

Rule, by consent of Counsel returnable forthwith. Respondents waive service. By consent and at the request of Counsel , taken up for hearing and final disposal.

I

1. A purchaser in a sale conducted by the State Financial Corporation has challenged an attachment levied under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The issues that have been canvassed before the Court

here relate to (i) the meaning and extent of the first charge statutorily created by Section 11(2) of the EPF Act, 1952; (ii) whether, as the Petitioner contends, the charge cannot be enforced in the hands of a purchaser in a sale conducted under the State Financial Corporation Act, 1951; and (iii) whether the charge and the priority created by Parliament in the payment of PF dues is confined to insolvency and winding up alone. We have declined to accept the line of argument pressed before us. The first charge on the assets of the establishment created by Parliament while enacting section 11(2) of the EPF Act, 1952 and the priority enunciated there is given overriding effect, notwithstanding anything to the contrary contained in any law for the time being in force. The charge and the priority are founded on overriding social welfare principles: protecting the terminal benefits of industrial workers over other competing claims. We decline to read down Parliament's mandate. Finally, we hold that the terms of the sale put the Petitioner on notice that this was a sale on an “as is where is” basis. For the reasons which we now elucidate, we decline to interfere, in our jurisdiction under Article 226 of the Constitution.

II

The Facts :

2. The Fifth Respondent conducted, prior to 2002, business activities from a plot of land (W-79) in the MIDC area at Shiroli, Kolhapur. Maharashtra State Financial Corporation (MSFC), impleaded to these proceedings as the Fourth Respondent, had granted term loan facilities to the Fifth Respondent. Upon the default of the Fifth Respondent, MSFC took steps under Section 29 of the State Financial Corporations Act, 1951, ("SFC Act, 1951") and took over the plot and the structures standing thereon. The lease hold rights in the land and the structures were sold to the Petitioner under and in pursuance of a Sale Deed executed on 21st October 2002. Possession was transferred to the Petitioner. On 5th March 2004, the Third Respondent, who is the Recovery Officer in the Employees' Provident Fund Organisation at Kolhapur, served an order of attachment upon the Petitioner in respect of the land and the structures standing thereon. The notice was under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act, 1952). The Fifth Respondent was in arrears of Provident Fund dues and it appears from the record that a notice of attachment was served on the ground that the Fifth Respondent had failed to pay a sum of

Rs.8,35,809/- which was due under a certificate of the Regional Provident Fund Commissioner dated 17th April 2002. The Petitioner submitted a representation to MSFC on 12th March 2004 and having failed to elicit a response thereafter, moved these proceedings under Article 226 of the Constitution in order to challenge the order of attachment. A declaration has also been sought to the effect that the Petitioner is not liable for the Provident Fund dues towards the employees of the Fifth Respondent.

III

SUBMISSIONS :

3. On behalf of the Petitioner, it has been submitted that (i) The Petitioner having purchased the property in question, in an auction sale conducted by MSFC under Section 29 of the SFC Act, 1951, Section 11(2) of the EPF Act, 1952 and the priority set out therein cannot apply to the Petitioner since the Petitioner is not the employer of the employees in respect of whose dues the Provident Fund Authorities are proceeding; (ii) The property had ceased to be the assets of the establishment of the Fifth Respondent who is liable to pay the dues; (iii) The priority envisaged in Section 11(2) is attracted only in the case of winding

up and in the facts of this case it has no application where neither the Fifth Respondent, nor the Petitioner has been ordered to be wound up; (iv) The sale by MSFC in favour of the Petitioner not being a voluntary transfer by the owner of the property, Section 17-B of the EPF Act, 1952 would have no application. MSFC which is also a party to these proceedings has similarly submitted that the first charge created by Section 11(2) and the priority reflected therein can apply only in a situation where a Company is in liquidation or an employer is adjudged as an insolvent. Absent a proceeding for liquidation or proceedings in insolvency, it was urged, Section 11(2) would have no application. Hence, it is submitted that the view of the Kerala High **Court in Recovery Officer and Assistant Provident Fund Commissioner vs. Kerala Financial Corporation**, 2002 III CLR 191, does not reflect the correct position in law and the decision of the Division Bench of this Court in **Janata Sahakari Bank Ltd. Vs. Assistant Provident Fund Commissioner and Recovery Officer,** (Writ Petition 639 of 2005 decided on 23rd June 2005) is per incuriam and requires reconsideration. These submissions would now merit consideration.

IV

-1. The First charge and priority under Section 11(2) :

The EPF Act, 1952, is an Act to provide for the Institution of Provident Funds, Pension Funds and Deposit Linked Insurance Funds for employees in Factories and other establishments. The EPF Act constituted, when it was enacted five decades ago, a water shed in the evolution of social security norms for industrial workers. The institution of a Contributory Provident Fund in which both the workers and the employer would contribute was envisaged to provide social security to industrial workers who at the end of their working careers would otherwise be left with no safety net to meet their own needs and those of their families.

Section 11 of the EPF Act, 1952 declares the priority of payment of contributions over other debts. As originally enacted, Section 11 read as follows :

> "11. Priority of payment of contributions over other debts.- The amount due in respect of any contribution under this Act or under any scheme and any charges incurred in respect of the administration of the Fund under any scheme shall, where the liability therefor has accrued before the person liable is adjudicated insolvent, or, in the case of a company ordered to be wound up, before the date of such order, be deemed to be included among the debts which under section 49 of the Presidency-Towns Insolvency Act, 1909 (III of 1909) or under section 61 of the Provincial Insolvency Act, 1920

> (V of 1920) or under Section 230 of the Indian Companies Act, 1913 (VII of 1913) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be."

Section 11 was amended by Amending Act 40 of 1973 and by Amending Act 33 of 1988. As it stands today, Section 11 reads as follows:

> "11. Priority of payment of contributions over other debts.- (1) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due-
>
> (a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of Section 15 of any charges payable by him under any other provision of this act or of any provision of the Scheme or the Insurance Scheme; or
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> (b) from the employer in relation to an exempted establishment in respect of any contribution to the provident fund or any insurance fund in so far it relates to exempted employees, under the rules of the provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under sub-section (6) of section 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under Section 17;
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> shall, where the liability therefor has accrued before the

order of adjudication or winding up is made, be deemed to be included among the debts which under Section 49 of the Presidency-Towns Insolvency Act, 1909 (3 of 1909) or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under Section 530 of the Companies Act, 1956 (1 of 1956) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

Explanation. - In this sub-section and in section 17, “insurance fund” means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.

(2)Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employee's contribution deducted from the wages of the employee or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.”

The provisions of sub-Section (1) of Section 11 apply in a situation where an employer is adjudged insolvent or, when an employer is a Company, an order of winding up is made. In that event, amounts falling in the description contained in clauses (a) and (b) of sub-section (1) which have accrued before the order of adjudication or winding up was made are deemed to be included

among the debts which are to be paid in priority to all other debts in the distribution of the property of the insolvent, or the Company in liquidation, as the case may be, under the Insolvency Acts of 1909 or 1920 or under Section 530 of the Companies Act, 1956. Sub-section (2) of Section 11 is essentially the provision which falls for consideration in the present case. Sub-section (2) is prefaced with the words “without prejudice to the provisions of sub-section (1)”. The provision applies if any amount is due from an employer whether in respect of the employee's contribution that has been deducted from the wages or the employer's contribution. Upon any such amount being due, the statute mandates that the amount due shall (i) be deemed to be the first charge on the assets of the establishment (ii) be paid in priority to all other dues, notwithstanding anything contained in any other law for the time being in force.

-2. Is Section 11(2) confined to insolvency and winding up ?

On behalf of the Petitioner and MSFC, it was submitted that Sub-section (2) must apply only in those situations which are covered by Sub-section (1) namely, where an employer is

adjudged insolvent or where the employer, being a company, is being wound up. That construction, however, cannot be accepted for a number of reasons. First and foremost, the words “without prejudice to the provisions of Sub-section (1)” are intended to indicate that the provisions of Sub-section (2) shall not dilute the operation of sub-section (1). Consequently, the priority which is created by Sub-section (1) in the distribution of the property of an insolvent or of the assets of a Company which is being wound up is not disturbed by the first charge or the priority which is created by Sub-section (2). Secondly, interpreting the words of Sub-Section (2) as they stand, the provision is intended to apply if any amount is due from an employer whether in respect of the employer's own contribution or the employee's contribution for which a deduction has been made from the wages. Once any such amount is due, Parliament has provided that it shall be deemed to be a first charge on the assets of the establishment and be paid in priority to all other debts notwithstanding anything contained in any other law for the time being in force. To read Sub-section (2) as subservient to Sub-section (1) or as a provision which operates in the same field as sub-section (1) wound render sub-section (2) largely otiose. Such a construction cannot be accepted since it would be contrary

to the plain and grammatical meaning that attaches to the words used in Sub-section (2) of Section 11. The words "if any amount is due from the employer" must be given a full and untrammeled construction. The deeming fiction in Sub-section (2) by which a first charge is created on the assets of the establishment must be taken to its logical conclusion and must comprehend within its ambit all the consequences which can reasonably be construed to emanate therefrom. Sub-Section (2) is not a proviso to sub-section (1) but is a provision that stands by itself to lend teeth to the recoverability of the dues of the employees by way of contribution.

-3. The view taken by the Karala High Court and by this Court:

The view which we to take finds support in a judgment of a Division Bench of the Kerala High Court in **Recovery Officer and Assistant Provident Fund Commissioner vs. Kerala Financial Corporation,** 2002 III CLR 191. In that case, proceedings were initiated under Section 29 of the SFC Act, 1951. An attachment was levied under the EPF Act, 1952 by the Recovery Officer which was challenged by the State Finance Corporation. Chief Justice B.N. Srikrishna (as His Lordship then was) speaking for the

Division Bench noted that Sub-section (1) of Section 11 deals with the question of priority where an employer is adjudged an insolvent or; being a company, is subjected to an order of winding up. The Division Bench held that Sub-section (2) of Section 11 "deals with other types of priorities." (emphasis supplied). The Kerala High Court inter alia rejected the submission that it was the SFC Act of 1951 which had overriding effect in view of Section 46B of that Act. The Court held that while the SFC Act was enacted with a view to ensuring quick and effective recovery of amounts due from defaulters, Provident Fund payable to workers was of greater moment since it was a matter of a terminal social security benefit made available by statute to the working classes. Besides, the EPF Act, 1952 being a later Act also enacted by Parliament, it was Section 11(2) of that Act which would override all other provisions, including Section 46B. The judgment of the Division Bench sums up the position thus:

> "The contention of the first respondent based on the overriding effect of S.46-B of the SFC Act has no substance in our judgment. Undoubtedly, the intention of Parliament in enactment S.46-B in the year, 1956 was to ensure that a State Financial Corporation could quickly and effectively recover the amounts due by taking possession of the property of the defaulter instead of having resort to the cumbersome method of recovery through a court of law. While this was the law,

> Parliament amended S.11 of the EPF & MP Act by specifically enacting sub-s.(2) thereof, declaring that the amounts due as contribution to the Employees Provident Fund has first charge on the assets of the establishment and that, notwithstanding anything contained in any other law for the time being in force, it shall be paid in priority against all other debts. In fact, the second facet of S.11(2) of the EPF & MP Act goes one step further than what is provided in S.46-B of SFC Act. the reason for this is obvious. While the State Financial Corporation would have to be helped to recover the debts due to it from a defaulting debtor, the Provident Fund payable to workers is of greater moment, since it is a matter of terminal social security benefit made available by statute to the working class. Taking into consideration that EPF & MP Act is a social benefit legislation, and the evil consequences of Provident Fund dues being defeated by prior claims of secured or unsecured creditors, the Legislature took care to declare that irrespective of when a debt is created, the dues under the EPF & MP Act would always remain first charge and shall be paid first out of the assets of the establishment. We are also not impressed by the contention of the first respondent that upon usage of non obstante clause in S.46-B of the SFC Act. Sub-s. (2) of S.11 of the EPF Act is of subsequent date. No doubt, both S.46-B of the SFC Act and S.11(2) of the EPF Act declare their intent by usage of the non obstante clause. But, since S.11(2) of the EPF & MP Act has been enacted later, we must ascribe to the Parliament the intention to override the earlier legislation also. It is, therefore, clear that S.11(2) of the EPF & MP Act overrides all provisions of other enactments including S.46-B of the SFC Act."

The judgment of the Kerala High Court has been followed by a Division Bench of this Court in **Janata Sahakari Bank Ltd. vs. Assistant Provident Fund Commissioner** (Writ Petition 639 of

2005 decided on 23rd June 2005) to which one of us, D.Y. Chandrachud, J. was a party. In that case, the question which arose before the Court related to the impact of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on the provisions of the EPF Act, 1952. This Court noted that the intention of Parliament in enacting the Securitization Act was to ensure that Banks and Financial Institutions can quickly and effectively recover amounts due to them by taking possession of the secured assets instead of having to resort to the cumbersome method of recovery through Civil Courts and Tribunals. The Securitization Act, however, does not have any substantive provision giving precedence to the dues of Banks and Financial Institutions whereas, on the other hand, Section 11(2) of the EPF Act declares that amounts due as contribution to the Employees' Provident Fund shall be a first charge on the assets of the establishments to be paid in priority against all other dues notwithstanding anything contained in any other law for the time being in force. The reason for this, the Court said, was obvious:

> "The Legislature intended to secure the terminal social security benefit made available by the statute to the working class. ... The non-obstante clause contained in

> section 35 of the Securitization and Reconstruction Act has to be construed and given effect to having regard to the object and purpose of the said Act and so construed it does not in any way effect the operation of the provisions of EPF and MP Act. We are therefore, of the view that the respondent No.1 shall be entitled to exercise power as a Recovery Officer for recovering Provident Fund dues."

-4. Statement of Objects cannot override plain statutory construction.

On behalf of MSFC, however, it is submitted that the judgments of the Kerala High Court and of the Division Bench of this Court are not correct and that sub-Section (2) was intended to operate only in a situation where an establishment is wound up. It was emphasised from the Statement of Objects and Reasons appended to the Bill resulting in Amending Act 40 of 1973 that the National Commission of Labour had recommended that arrears of Provident Fund should be made a first charge on the assets of the establishment at the time of its winding up. Similarly, when the Act was amended by Amending Act 33 of 1980, the Statement of Objects and Reasons contained a reference to the effect that provision was being made for treating the entire amount of arrears

of Provident Fund dues as a first charge on the assets of the establishment in the event of its liquidation.

Now, in assessing this submission it becomes necessary to advert to what is perhaps a basic principle of statutory interpretation. Reference to the Statement of Objects and Reasons accompanying the enactment of a law is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to a statute, and the evil which the statute sought to remedy. (**Sanghvi Jeevraj Ghewar Chand v. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union,** AIR 1969 SC 530; **Virji Ram Sutaria v. Nathalal Premji Bhanvadia,** AIR 1970 SC 765; **Shiv Kirpal Singh v. V. V. Giri**, AIR 1970 SC 2097; **Secretary, Regional Transport Authority v. D. P. Sharma,** AIR 1989 SC 509; and **Devadoss (Dead) v. Veera Makali Amman Koil Athlur,** AIR 1998 SC 750.) It is equally well settled that the Statement of Objects and Reasons cannot be used to determine the true meaning and effect of the substantive provisions of the statute. A Statement of Objects and Reasons cannot be used except for the limited

purpose of understanding the background and the antecedent state of affairs leading to the legislation. Hence, it would impermissible for this Court to restrict the operation of the plain and grammatical meaning of the words contained in Sub-section (2) of Section 11 with reference to the Statement of Objects and Reasons. Similarly, a reference therein to the report of the National Commission of Labour can at the highest indicate the historical antecedents, the surrounding circumstances or the mischief which was intended to be remedied. In interpreting the language of a statute, it is trite law that it is the language that has to be construed. An effort was made to submit that the words “be paid in priority to all other debts” must have meaning only to insolvency or winding up. The charge that is created by sub-Section (2) and the mandate that the amount due shall be paid in priority to all other debts cannot, however, be restricted only to a situation of insolvency or winding up. Clearly, sub-section (2) cannot be so construed or restricted.

-5. <u>The sale to the Petitioner : As-is-where-is</u> :

In the present case, it would be necessary to advert to Clause 2 of the Sale Deed under which the Petitioner acquired the

property from MSFC on 21st October 2002. Clause 2, in so far as is material provides as follows:

> "The property offered for sale is on "as is where is and what is basis". The corporation does not undertake any responsibility to procure any permission/licence etc., in respect of the property offered for sale or for any dues like MIDC water/service charges, transfer fees, electricity dues and charges for fresh power connection, dues of the Coop. Industrial Estate, taxes of Municipal Corporation/local authority or other dues/taxes such as dues of the Sales Tax Department, Excise Department, Customs Department, if any, in respect of the said property and the same shall be payable by the purchaser." (emphasis supplied).

The terms of the contract between MSFC and the Petitioner clearly stipulate that the property was offered for sale on an "as is where is" basis. MSFC put the Petitioner on notice that it did not undertake any responsibility to procure any permission in respect of the property offered for sale or for any dues (like MIDC water/service charges, transfer fees, electricity dues, charges for fresh power connection, dues of the Cooperative Industrial Estate, taxes of the Local Authorities) or other dues.

-6. Section 100 of the Transfer of Property Act, 1882 :

The Petitioner was at all times on clear notice of the fact that the property was being sold on an as is where is basis and that MSFC did not undertake any liability for the payment of dues. We advert to this because it has been one of the limbs of argument of the Petitioner that the Petitioner was not on notice of the liability, if any, that was required to be borne to the Provident Fund Authorities. Section 100 of the Transfer of Property Act, 1882, inter alia provides as follows :

> ""100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.
>
> Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

In **Ahmedabad Municipal Corporation vs Haji Abadulgafur Haji Husseinbhai,** 1971 (1) SCC 757, the Supreme Court considered the provisions of Section 141 of the Bombay Provincial Municipal

Corporations Act, 1949, under which property taxes due are to be regarded, subject to the prior payment of the land revenue due to the State Government to be a first charge on the property. A person was in arrears of property taxes in respect of which the Municipal Corporation had a charge on the property of the defaulter. The property was, however, sold in execution of a mortgage decree and when the Corporation purported to exercise its charge, the purchaser in a Court auction, filed a suit for declaration that he was the owner of the property and that arrears of taxes were not recoverable from him. The Supreme Court held that under Section 100 of the Transfer of Property Act, 1882, what is enacted by the second half is a general prohibition and no charge shall be enforced against any property in the hands of a transferee for consideration without notice of the charge and the exception to this general rule must be expressly provided by law. While constructive notice was sufficient, to satisfy the requirement of notice in the proviso to Section 100, whether the transferee has constructive notice is to be determined in the facts and circumstances of the case. The provisions of Section 100 were revisited in the **State Bank of Bikaner & Jaipur vs. National Iron & Steel Rolling Corporation,** (1995) 2 SCC 19. The State Bank

had given a Cash Credit Facility to a borrower who had created a Deed of Mortgage on his Factory premises. The Bank filed a suit for the recovery of its dues at which stage, the Commercial Tax Officer of the State of Rajasthan got himself impleaded on the ground that the Department had a prior claim for the recovery of Sales tax dues under Section 11AAAA of the Rajasthan Stales Tax Act, 1954. That provision was to the effect that notwithstanding anything contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum payable by a dealer or any other person shall be the first charge on the property. The Supreme Court considered the provisions of Section 11AAAA and its impact on Section 100 of the Transfer of Property Act, 1882. The Court noted that there was a distinction between a mortgage and a charge, one which was noted by the Supreme Court in **Dattatraya Shanker Mote vs. Anant Chintaman Datar**, (1974) 2 SCC 799. The Supreme Court held that the phrase "transfer of property" refers to the transferee of the entire interest in the property and it does not cover the transfer of only an interest in the property by way of a mortgage. The Supreme Court held that since the statute created a first charge, it gave priority to the statutory charge over all other charges on the property including a

mortgage since the charge operates on the entire property of dealer including the interest of the mortgagee therein. In the recent judgment of the Supreme Court in **State of Karnataka vs. Shreyas Papers Pvt. Ltd**. (2006) 1 SCC 615 one of the issues which fell for consideration was whether the purchaser of assets of a concern sold by a State Financial Corporation under Section 29 of the SFC Act, 1951 would be liable under the Karnataka Sales Tax Act, 1967 for the arrears of Sales Tax of the concern whose assets had been transferred. Section 15(1) of the State Sales Tax Act showed that the liabilities of the defaulting transferor could be foisted on the transferee only if the ownership of the business was transferred. In that case, the Supreme Court noted that it was not a matter of dispute that there was only a transfer of the individual assets of the defaulting Company rather than the defaulting company being sold as a going concern. Hence, Section 15(1) of the Karnataka Sales Tax Act, 1967 was held not to have been attracted. In that case, the Supreme Court also noted that no provision of law had been cited before the Court that exempted the requirement of a notice of the charge for its enforcement against a transferee who had no notice of the same. The Supreme Court noted that the transferee had in fact, no notice of the

arrears of sales tax either actual or constructive. The State Sales Tax Act, therefore, contained a provision subjecting the transferee to the liabilities of the transferor only when the ownership of the business was transferred. Secondly, the State law did not contain any provision exempting the requirement of the notice of a charge to the transferee. In contrast it may be noted that Section 11(2) of the EPF Act, 1952 specifically (i) creates a first charge in respect of any amount being due from the employer on account of employer's or employee's contribution; (ii) provides that the amount shall be liable to be paid in priority to all other debts; and (iii) envisages that this shall be notwithstanding anything contained in any other law for the time being in force. The non obstante provision, therefore, would necessarily override all other provisions of law including the Transfer of Property Act, 1882.

4. On behalf of the Petitioner it has been urged that Section 17B of the EPF Act, 1952 will not apply to a situation such as the present. For the purpose of this case we have proceeded on the basis that this is so. Section 17-B of the EPF Act, 1952 comes into operation where an employer in relation to an establishment transfers that establishment in whole or in part by sale, gift, lease

or licence or in any other manner whatsoever. In such a case, both the employer and the person to whom the establishment is transferred are jointly and severally liable to pay the contribution and other sum due from the employer under the provisions of the Act or of any scheme framed thereunder. The liability of the transferee shall be limited to the value of the assets obtained by him by such transfer. The submission was that Section 17B applies to a situation where a transfer of establishment has taken place by the employer meaning thereby that there is a voluntary transfer of assets. Even if the submission were to be accepted, Section 17B is an additional provision which deals with a specific eventuality viz., the transfer of an establishment in whole or in part by an employer to a transferee. We clarify that in the view which we have taken, it has not been necessary to enter a finding on the correctness of the interpretation of Section 17-B suggested by the Petitioner. We leave that open for decision in an appropriate case. The provisions of Section 11(2) are, however, wide enough to cover an eventuality not within the purview of Section 17B, in so far as it creates a first charge and provides that it shall have priority over all other debts notwithstanding anything contained in any other law for the time being in force.

5. The judgment of the Supreme Court in **State Bank of Bikaner** (supra), it may be noted, has been followed both in the judgment of the Division Bench of the Kerala High Court and by the Division Bench of this Court noted above. In our view, the non-obstante provision contained in Sub-section (2) of Section 11 has force and effect notwithstanding anything contained in any other law for the time being in force which will include both the State Financial Corporations Act, 1951 and, for that matter, the Transfer of Property Act, 1882. We, therefore, do not find any merit in any of the contention which has been urged on behalf of the Petitioner. The first charge on the assets of the establishment cannot be disrupted by the sale of the property. In any event, as we have already noted, the sale deed that was executed in favour of the Petitioner does in the facts of this case provide an answer to the contention that the Petitioner had no notice of the possible liability which could have arisen.

6. In the circumstances, we do not find any reason to exercise our jurisdiction under Article 226 of the Constitution. There is no merit in the petition which is accordingly dismissed. There is no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.